

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/780,846

Inventor(s) : Shaun Thomas Broering

Filed : February 18, 2004

Art Unit : 1791

Examiner : Jeff H. Aftergut

Docket No. : 9527L\$

Confirmation No. : 2517

Customer No. : 27752

Title : Method and Apparatus for Making Flexible Articles Having Elastic-Like Behavior with Visually distinct Regions

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on September 19, 2008.

A timely Notice of Appeal was filed on December 18, 2008.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-20 are rejected.

The rejections of claims 1-20 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

As provided in claim 1, the invention comprises a method of making an article having elastic like behavior. A sheet of web material is introduced. At least a portion of the sheet is overlapped upon itself. The sheet material has a c-shaped cross-section. As it is a sheet of material, the edges of the material are free to move. The overlapped portion of the sheet is formed into a strainable network. The strainable network includes a plurality of un-deformed first regions and a plurality of deformed second regions. The second regions are formed into disengagable pleat elements. The pleat elements are disengaged using a disengaging means. The disclosed structure of the disengaging means includes a static opening bar, a dynamic opening bar, and air knife, and a suction means. The structures associated with the suction means include: a vacuum source coupled with apertures in the teeth of at least one forming roller, a set of opposing plenums each plenum coupled to a vacuum source as described and illustrated in paragraphs 27-45, and figures: 6, all; 7, items 201, 203, 205; 8, all; 9 all; 10, items 206, 208, 219, and 220; 11, all; 12, all; 13, items 206, 208, 219, and 220; 14, all; 15, all; 16, all but 52, and 53; 17, all; and 18, item 579. Support for the limitations of this claim may be found in the specification at paragraphs 6, and 27-45, and figures 2-18 inclusive.

As provided in claim 20, the invention comprises a method for forming an article having elastic-like behavior. A sheet of material having at least one overlapped portion, is introduced. The sheet of material has a c-shaped cross-section. The overlapped portion is formed into at least one region of disengagable pleat elements. The pleat elements are disengaged using a disengaging means selected from an air knife, a static opening bar, a dynamic opening bar, and suction means. The structures of the air knife, static opening bar, dynamic opening bar are set forth in paragraphs 27-45, and figures 6 all; 7, items 201, 203, 205; 8, all; 9 all; 10, 206, 208, 219, and 220; 11, all; 12, all; 13, 206, 208, 219, and 220; 14, all; 15, all; 16, all but 52, and 53; 17, all; and 18, 579. Support for the subject matter of this claim may be found in paragraphs 6, and 27-45, and in figures 2-18 inclusive.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 3, 12-16, 18, and 19 are rejected under 35 USC §103(a) as unpatentable over Bustin (GB 1301198) in view of Meyer et al. (US 6,394,652), optionally further taken with either Buchman et al., or Bohn, et al..
2. Claims 2, 4, 10 and 20 are rejected under 35 USC §103(a) as unpatentable over Bustin (GB 1301198) in view of Meyer et al. (US 6,394,652), optionally further taken with either Buchman et al., or Bohn, et al., further taken in view of Cronauer (US 5,709, 069).
3. Claims 2, 4-9, 10-11, 17, and 19-20 stand rejected under 35 USC §103(a) as being unpatentable over Bustin in view of Meyer et al., optionally further taken with either Buchman et al., or Bohn, et al., in view of Rowe, et al., or LaFleur, et al., or Yisha, et al., or the collaborative teachings of Hiramoto, et al., Henaux, Adelamnn, and Muller.

ARGUMENTS

1. The rejection of Claims 1, 3, 12-16, 18, and 19 under 35 USC §103(a) as unpatentable over Bustin (GB 1301198) in view of Meyer et al. (US 6,394,652), optionally further taken with either Buchman et al., or Bohn, et al., is appealed.

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer and further optionally to combine with the teachings of either of Buchman for sealing and perforating films, or Bohn for adding a draw tape to a bag. This is akin to applying methods for pressurizing a closed pipe with pressurizing a flat plate of material. The methods may not be presumed

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

to be applicable to the other application. Methods for separating a tube may not be presumed to be applicable to separating a sheet. The Examiner speaks in terms of a motivation to combine the references but the point relates not to the motivation to combine references but to the reasonable expectation of success in making the combination. A Mylar balloon may be inflated, yet the method for the successful inflation of a balloon may not be applied with any real success to the inflation of a sheet of Mylar film. The particular dynamics involved in the controlled inflation of a closed tube and the handling of an overlapped, but otherwise open sheet, are vastly different. There is no reasonable expectation of success in making the cited combination of references. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

2. The rejection of claims 2, 4, 10 and 20 under 35 USC §103(a) as unpatentable over Bustin (GB 1301198) in view of Meyer et al. (US 6,394,652), optionally further taken with either Buchman et al., or Bohn, et al., further taken in view of Cronauer (US 5,709,069), is appealed.

Claims which depend from allowable independent claims are also allowable. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer and further optionally to combine with the teachings of either of Buchman for sealing and perforating films, or Bohn for adding a draw tape to a bag. This is akin to applying methods for pressurizing a closed pipe with pressurizing a flat plate of material. The methods may not be presumed to be applicable to the other application. Methods for separating a tube may not be presumed to be applicable to separating a sheet. The Examiner speaks in terms of a

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

motivation to combine the references but the point relates not to the motivation to combine references but to the reasonable expectation of success in making the combination. A Mylar balloon may be inflated, yet the method for the successful inflation of a balloon may not be applied with any real success to the inflation of a sheet of Mylar film. The particular dynamics involved in the controlled inflation of a closed tube and the handling of an overlapped, but otherwise open sheet, are vastly different. The addition of the Cronauer reference does not cure the basic faults of the underlying Bustin – Meyer (with options to Buchman or Bohn) combination. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

3. The rejection of claims 2, 4-9, 10-11, 17, and 19-20 under 35 USC §103(a) as being unpatentable over Bustin in view of Meyer et al., optionally further taken with either Buchman et al., or Bohn, et al., in view of Rowe, et al., or LaFleur, et al., or Yisha, et al., or the collaborative teachings of Hiramoto, et al., Henaux, Adelamnn, and Muller, is appealed.

Support for a *prima facie* case of obviousness under 35 USC §103(a) requires in part that there is a reasonable expectation of success in making the combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Examiner seeks to combine the teachings of Bustin with regard to the inflation and separation of a continuous tube of material with sheet materials of Meyer. The methods of Bustin may not be presumed to be applicable to dynamics of a dissimilar system. Methods for separating a tube may not be presumed to be applicable to separating a sheet. There is no reasonable expectation of success in making the cited combination of references. The addition of the Rowe, et al., or LaFleur, et al., or Yisha, et al., or the collaborative teachings of Hiramoto, et al., Henaux, Adelamnn, and Muller references do not cure the basic faults of the underlying Bustin - Meyer (with further optional references) combination. A *prima facie* case of obviousness under 35 USC §103(a) has not been established and this rejection should be overturned.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

SUMMARY

In view of all of the above, it is respectfully submitted that a *prima facie* of obviousness has not been properly established or supported under any of the cited combinations of references. Each of the rejections of the claims should be overturned.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

David K. Mattheis

Typed or printed name

Registration No. 48,683

(513) 983-7065

Date: February 17, 2009

Customer No. 27752

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

CLAIMS APPENDIX

1 A method of making an article having elastic-like behavior comprising the steps of:

introducing a sheet material having at least one overlapped portion, the sheet material having a c-shaped cross section; forming said overlapped portion of sheet material into a strainable network including a plurality of first regions and a plurality of second regions, said first regions being substantially un-deformed and said second regions being formed into disengagable pleat elements; and disengaging said pleat elements using a disengaging means.

2 The method of making an article according to claim 1, wherein said disengaging means is selected from the group consisting of air knife, static opening bar, dynamic opening bar, and suction means, and any combinations thereof.

3 The method of making an article according to claim 1, further comprising the step of overlapping one portion of sheet material over another portion of sheet material.

4 The method of making an article according to claim 2, further comprising the step of separating said overlapped portions of said sheet material using said disengaging means.

5 The method of making an article according to claim 2, wherein said dynamic opening bar comprises at least one first set of rollers and said pleat elements are disengaged from each other while at least one portion of said sheet material rides over an opposite outer segment of at least one roller.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

6 The method of making an article according to claim 5, wherein said dynamic opening bar includes an end cap.

7 The method of making an article according to claim 5, wherein said dynamic opening bar is wholly surrounded by said overlapped portions of said sheet material.

8 The method of making an article according to claim 5, wherein said dynamic opening bar comprises a second set of rollers and said pleat elements remain engaged as said sheet material passes between a first set of rollers and thereafter said pleat elements are disengaged while at least a portion of said sheet material is riding over at least one opposite outer segment of a second set of rollers.

9 The method of making an article according to claim 1, wherein said disengaging step further comprising riding said sheet material on said disengaging means.

10 The method of making an article according to claim 2, wherein the step of forming further comprises forming said pleat elements as said sheet material passes between a pair of forming rollers, at least one forming roller having toothed regions and grooved regions.

11 The method of making an article according to claim 2, wherein said disengaging step further comprises the step of applying a vacuum to at least one overlapped portion of said sheet material.

12 The method of making an article according to claim 1, further comprising the step of winding said sheet material onto a roll.

13 The method of making an article according to claim 1, further comprising the step of incorporating a closure means into said sheet material.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

14 The method of making an article according to claim 1, further comprising the step of unwinding a continuous web of sheet material from a roll.

15 The method of making an article according to claim 1, further comprising the steps of extruding a raw plastic material and converting the extruded plastic material into a continuous web of sheet material.

16 The method of making an article according to claim 1, further comprising the step of forming flexible bags from said sheet material.

17 The method of making an article according to claim 16, further comprising the step of sealing at least one edge of said flexible bag, and severing said sheet material across a width thereof at said sealed edge to separate said sheet material into individual flexible bags.

18 The method of making an article according to claim 16, further comprising the step of sealing at least one edge of said flexible bag, and perforating said sheet material across a width thereof at said sealed edge.

19 The method of making an article according to claim 18, further comprising the step of interleaving said individual flexible bags.

20 A method of making an article having elastic-like behavior comprising the steps of:

introducing at least one sheet material having at least one overlapped portion, the sheet material having a c-shaped cross section;

forming said overlapped portion of sheet material into at least one region of disengagable pleat elements; and disengaging said pleat elements using a disengaging

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

means selected from the group consisting of air knife, static opening bar, dynamic opening bar, and suction means, and any combinations thereof.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

EVIDENCE APPENDIX

None.

Appl. No. 10/780,846

Docket No. 9527L

Appeal Brief dated February 17, 2009

Reply to Office Action mailed on September 19, 2008

Customer No. 27752

RELATED PROCEEDINGS APPENDIX

None.